

*Suzanne Henderson*

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**NOTICE OF CONFIDENTIALITY RIGHTS: A NATURAL PERSON MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION BEFORE IT IS FILED IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

XTO REV PROD 88 (7-68) PAID UP (04/17/07)B

**OIL, GAS AND MINERAL LEASE**

THIS AGREEMENT made this 17 day of **October, 2008**, between **William F. Pendleton, a single man** Lessor (whether one or more), whose address is: **8633 Funtler Court, Fort Worth, Texas 76179** and **XTO Energy Inc.**, whose address is: **810 Houston St., Fort Worth, Texas 76102**, Lessee, WITNESSETH:

1. Lessor, in consideration of ten dollars and other valuable consideration, receipt of which is hereby acknowledged, and of the covenants and agreements of Lessee hereinafter contained, does hereby grant, lease and let unto Lessee the land covered hereby for the purposes and with the exclusive right of exploring, drilling, mining and operating for, producing and owning oil, gas, sulphur and all other minerals (whether or not similar to those mentioned), together with the right to make surveys on said land, lay pipe lines, establish and utilize facilities for surface or subsurface disposal of salt water, construct roads and bridges, dig canals, build tanks, power stations, telephone lines, employee houses and other structures on said land, necessary or useful in Lessee's operations in exploring, drilling for, producing, treating, storing and transporting minerals produced from the land covered hereby or any other land adjacent thereto. The land covered hereby, herein called "said land," is located in the County of Tarrant, State of Texas, and is described as follows:

**SEE ADDENDUM FOR ADDITIONAL PROVISIONS**

**SEE EXHIBIT "A" FOR LEGAL DESCRIPTION**

**This is a non-developmental Oil & Gas Lease, whereby Lessee, its successors or assigns, shall not conduct any operations, as defined herein, on the surface of said lands. However, Lessee shall have the right to pool or unitize said lands, or part thereof, with other lands to comprise an oil and/or gas development unit.**

This lease also covers and includes, in addition to that above described, all land, if any, contiguous or adjacent to or adjoining the land above described and (a) owned or claimed by Lessor by limitation, prescription, possession, reversion, after-acquired title or unrecorded instrument or (b) as to which Lessor has a preference right of acquisition. Lessor agrees to execute any supplemental instrument requested by Lessee for a more complete or accurate description of said land. For the purpose of determining the amount of any bonus or other payment hereunder, said land shall be deemed to contain 0.881 acres, whether actually containing more or less, and the above recital of acreage in any tract shall be deemed to be the true acreage thereof. Lessor accepts the bonus as lump sum consideration for this lease and all rights and options hereunder.

2. Unless sooner terminated or longer kept in force under other provisions hereof, this lease shall remain in force for a term of 3 years from the date hereof, hereinafter called "primary term," and as long thereafter as operations, as hereinafter defined, are conducted upon said land with no cessation for more than ninety (90) consecutive days.

3. As royalty, Lessee covenants and agrees: (a) To deliver to the credit of Lessor, in the pipe line to which Lessee may connect its wells, the equal 1/4 part of all oil produced and saved by Lessee from said land, or from time to time, at the option of Lessee, to pay Lessor the average posted market price of such 1/4 part of such oil at the wells as of the day it is run to the pipe line or storage tanks, Lessor's interest, in either case, to bear 1/4 of the cost of treating oil to render it marketable pipe line oil; (b) To pay Lessor on gas and casinghead gas produced from said land (1) when sold by Lessee, 1/4 of the amount realized by Lessee, computed at the mouth of the well, or (2) when used by Lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of 1/4 of such gas and casinghead gas; (c) To pay Lessor on all other minerals mined and marketed or utilized by Lessee from said land, one-tenth either in kind or value at the well or mine at Lessee's election, except that on sulphur mined and marketed the royalty shall be one dollar (\$1.00) per long ton. If, at the expiration of the primary term or at any time or times thereafter, there is any well on said land or on lands with which said land or any portion thereof has been pooled, capable of producing oil or gas, and all such wells are shut-in, this lease shall, nevertheless, continue in force as though operations were being conducted on said land for so long as said wells are shut-in, and thereafter this lease may be continued in force as if no shut-in had occurred. Lessee covenants and agrees to use reasonable diligence to produce, utilize, or market the minerals capable of being produced from said wells, but in the exercise of such diligence, Lessee shall not be obligated to install or furnish facilities other than well facilities and ordinary lease facilities of flow lines, separator, and lease tank, and shall not be required to settle labor trouble or to market gas upon terms unacceptable to Lessee. If, at any time or times after the expiration of the primary term, all such wells are shut-in for a period of ninety consecutive days, and during such time there are no operations on said land, then at or before the expiration of said ninety day period, Lessee shall pay or tender, by check or draft of Lessee, as royalty, a sum equal to one dollar (\$1.00) for each acre of land then covered hereby. Lessee shall make like payments or tenders at or before the end of each anniversary of the expiration of said ninety day period if upon such anniversary this lease is being continued in force solely by reason of the provisions of this paragraph. Each such payment or tender shall be made to the parties who at the time of payment would be entitled to receive the royalties which would be paid under this lease if the wells were producing, and may be deposited in such bank as directed by Lessor, or its successors, which shall continue as the depositories, regardless of changes in the ownership of shut-in royalty. If at any time that Lessee pays or tenders shut-in royalty, two or more parties are, or claim to be, entitled to receive same, Lessee may, in lieu of any other method of payment herein provided, pay or tender such shut-in royalty, in the manner above specified, either jointly to such parties or separately to each in accordance with their respective ownerships thereof, as Lessee may elect. Any payment hereunder may be made by check or draft of Lessee deposited in the mail or delivered to the party entitled to receive payment or to a depository bank provided for above on or before the last date for payment. Nothing herein shall impair Lessee's right to release as provided in paragraph 5 hereof. In the event of assignment of this lease in whole or in part, liability for payment hereunder shall rest exclusively on the then owner or owners of this lease, severally as to acreage owned by each.

4. Lessee is hereby granted the right, at its option, to pool or unitize any land covered by this lease with any other land covered by this lease, and/or with any other land, lease, or leases, as to any or all minerals or horizons, so as to establish units containing not more than 80 surface acres, plus 10% acreage tolerance; provided, however, units may be established as to any one or more horizons, or existing units may be enlarged as to any one or more horizons, so as to contain not more than 640 surface acres plus 10% acreage tolerance, if limited to one or more of the following: (1) gas, other than casinghead gas, (2) liquid hydrocarbons (condensate) which are not liquids in the subsurface reservoir, (3) minerals produced from wells classified as gas wells by the conservation agency having jurisdiction. If larger units than any of those herein permitted, either at the time established, or after enlargement, are permitted or required under any governmental rule or order, for the drilling or operation of a well at a regular location, or for obtaining maximum allowable from any well to be drilled, drilling, or already drilled, any such unit may be established or enlarged to conform to the size permitted or required by such governmental order or rule. Lessee shall exercise said option as to each desired unit by executing an instrument identifying such unit and filing it for record in the public office in which this lease is recorded. Such unit shall become effective as of the date provided for in said instrument or instruments but if said instrument or instruments make no such provision, then such unit shall become effective on the date such instrument or instruments are so filed of record. Each of said options may be exercised by Lessee at any time and from time to time while this lease is in force, and whether before or after operations or production has been established either on said land, or on the portion of said land included in the unit, or on other land unitized therewith. A unit established hereunder shall be valid and effective for all purposes of this lease even though there may be mineral, royalty, or leasehold interests in lands within the unit which are not effectively pooled or unitized. Any operations conducted on any part of such unitized land shall be considered, for all purposes, except the payment of royalty, operations conducted upon said land under this lease. There shall be allocated to the land covered by this lease within each such unit (or to each separate tract within the unit if this lease covers separate tracts within the unit) that proportion of the total production of unitized minerals from the unit, after deducting any used in lease or unit operations, which the number of surface acres in such land (or in each such separate tract) covered by this lease within the unit bears to the total number of surface acres in the unit, and the production so allocated shall be considered for all purposes, including payment or delivery of royalty, overriding royalty and any other payments out of production, to be the entire production of unitized minerals from the land to which allocated in the same manner as though produced therefrom under the terms of this lease. The owner of the reversionary estate of any term royalty or mineral estate agrees that the accrual of royalties pursuant to this paragraph or of shut-in royalties from a well on the unit shall satisfy any limitation of term requiring production of oil or gas. The formation of any unit hereunder which includes land not covered by this lease shall not have the effect of exchanging or transferring any interest under this lease (including, without limitation, any shut-in royalty which may become payable under this lease) between parties owning interests in land covered by this lease and parties owning interests in land not covered by this lease. Neither shall it impair the right of Lessee to release as provided in paragraph 5 hereof, except that Lessee may not so release as to lands within a unit while there are operations thereon for unitized minerals unless all pooled leases are released as to lands within the unit. At any time while this lease is in force Lessee may dissolve any unit established hereunder by filing for record in the public office where this lease is recorded a declaration to that effect, if at that time there is no unitized minerals being produced from such unit. Any unit formed may be amended, re-formed, reduced or enlarged by Lessee at its election at any time and from time to time after the original forming thereof by filing an appropriate instrument of record in the public office in which the pooled acreage is located. Subject to the provisions of this paragraph 4, a unit once established hereunder shall remain in force so long as any lease subject thereto shall remain in force. If this lease now or hereafter covers separate tracts, no pooling or unitization of royalty interests as between any such separate tracts is intended or shall be implied or result merely from the inclusion of such separate tracts within this lease but Lessee shall nevertheless have the right to

My commission expires \_\_\_\_\_

#### ADDENDUM

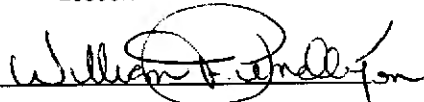
ATTACHED TO AND MADE A PART OF THAT CERTAIN OIL, GAS AND MINERAL LEASE DATED OCTOBER 17<sup>th</sup>, 2008, BETWEEN WILLIAM F. PENDLETON, A SINGLE MAN, AS LESSOR, AND XTO ENERGY INC., AS LESSEE, COVERING 0.91 ACRES OF LAND, MORE OR LESS, OUT OF THE DEMPSEY C. PACE SURVEY, A-1245, IN TARRANT COUNTY, TEXAS.

THE PROVISIONS OF ADDENDUM SUPERSEDE COMPLETELY ANY PROVISIONS TO THE CONTRARY CONTAINED IN THE LEASE TO WHICH THIS ADDENDUM IS ATTACHED.

15. **Minerals Covered.** Notwithstanding any other provision hereof, this lease covers only oil and gas. The term "oil and gas" means oil, gas, and other liquid and gaseous hydrocarbons and their constituent elements produced through a well bore.
16. **Gas Royalty.** Lessor's royalty shall be calculated free and clear of costs and expenses for exploration, drilling, development and production, including, but not limited to, dehydration, storage, compression, separation by mechanical means and product stabilization, incurred prior to the oil, gas and other mineral production leaving the leased premises or prior to delivery into a pipeline or gathering system, whichever occurs first; provided, however, (a) Lessee shall have free use of produced oil and gas for operations conducted on the leased premises or lands pooled therewith, and the royalties on oil and gas herein provided shall be computed after deducting any so used, and (b) Lessor's royalty shall bear its proportionate share of all ad valorem taxes and production, severance and other taxes and the actual, reasonable costs (including compression and related fuel charges) paid to or deducted by an unaffiliated third party to transport, compress, stabilize, process or treat the oil, gas and other mineral production off the leased premises in order to make the oil, gas and other mineral production saleable, increase its value or in order to get the oil, gas and other mineral production to a market.
17. **Shut-In Royalty.** If at the end of the primary term or any time thereafter one or more wells on the leased premises or lands pooled therewith are capable of producing oil or gas or other substances covered hereby in paying quantities, but such well or wells are either shut-in or production therefrom is not being sold by Lessee, such well or wells shall nevertheless be deemed to be producing in paying quantities for the purpose of maintaining this Lease. A well that has been drilled but not fraced shall be deemed capable of producing in paying quantities. If for a period of ninety (90) consecutive days such well or wells are shut-in or production therefrom is not being sold by Lessee, then Lessee shall pay shut-in royalty of twenty five dollars (\$25.00) per acre then covered by this Lease on or before the end of said 90 - day period and thereafter on or before each anniversary of the end of said 90 -day period while the well or wells are shut-in or production therefrom is not being sold by Lessee; provided, however, that if this Lease is otherwise being maintained by operations, or if production is being sold by Lessee from another well or wells on the leased premises or lands pooled therewith, no shut-in royalty shall be due until the end of the 90-day period next following cessation of such operations or production. Notwithstanding anything to the contrary herein, it is expressly understood and agreed that after the expiration of the primary term, Lessee shall not have the right to continue this Lease in force by payment of shut-in royalty for more than one single period of up to two (2) consecutive years.
18. **No Surface Operations.** It is hereby agreed and understood that there shall be no drilling activities on the surface of the leased premises without the prior written permission from the surface owner of the applicable portion of the leased premises. Notwithstanding the foregoing, this waiver of surface shall not be construed as a waiver of the rights of Lessee to utilize the subsurface of the leased premises under this lease, and Lessee shall have the right to exploit, explore for, develop and produce oil, gas and other covered minerals under this lease from wells from surface locations off the leased premises, including, but not limited to, directional or horizontal drilling activity which comes under the surface of the leased premises. This drilling surface waiver does not apply to any surface rights associated with instruments other than this lease.
19. **Vertical Pugh.** Upon the expiration of the primary term of this Lease, upon the expiration of any extension or renewal of the primary term, or after cessation of operations as provided herein, whichever occurs last, this Lease shall terminate as to all rights lying below one hundred feet (100') below the stratigraphic equivalent of the deepest formation drilled.
20. **No Warranties.** Lessor makes no warranty of any kind with respect to title to the Land. By acceptance of this Lease, Lessee acknowledges that it has been given every opportunity to investigate and has conducted sufficient investigation to satisfy itself as to the title to the Land, and Lessee assumes all risk of title failures. All warranties that might arise by common law or by statute, including but not limited to Section 5.023 of the Texas Property Code (or its successors), are excluded. If Lessor owns an interest in the Land less than the entire fee simple estate, then the royalties (including shut-in royalties) payable hereunder will be reduced proportionately. All royalty interest covered by this lease (whether or not owned by Lessor) shall be paid out of the royalty herein provided. Lessor will use all its reasonable efforts to assist Lessee to subordinate any rights of a mortgage holder to perfect the Lessee's rights under this lease; provided, however, any necessary subordination shall be obtained by Lessee at Lessee's sole expense. In the event Lessee is unable to obtain a subordination agreement, Lessee, at its option, may discharge any tax, mortgage, or other lien or interest and other charges on the Land superior to this Lease, and in the event Lessee does so, Lessee will have the option of applying the royalties accruing to Lessor toward payment of same and Lessee shall be subrogated to the rights of the holder thereof.

Executed on the date first written above.

Lessor:

By: 

WILLIAM F. PENDLETON

By: October 17, 2008

## **EXHIBIT "A"**

This Exhibit "A" is attached to and made a part of that certain Oil, Gas and Mineral Lease dated the 17<sup>th</sup> day of October, 2008, by and between William F. Pendleton, a single man, as Lessor(s) and XTO Energy Inc., as Lessee.

0.881 acres, more or less, out of the Dempsey C. Pace Survey, Abstract No. 1245, being Lots 27 and 36, Block 22, Lake Country Estates, Phase IV, an Addition on the City of Fort Worth, Tarrant County, Texas, according to the plat thereof recorded in Volume 388-82, Page 21, Plat Records, Tarrant County, Texas, and being those same land more particularly described in a Warranty Deed, dated July 12, 2004 from Anita G. Pendleton to William F. Pendleton, recorded thereof in Document No. D204223748, Deed Records, Tarrant County, Texas, and amendments thereof, including streets, easements and alleyways adjacent thereto, and any riparian rights.